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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

MM DOCKET NO. 93-301

CHARLES A. FARMER

RICHARD M. SCHAFBUCH

Ilwaco, Washington

DATE OF HEARING: January 26, 1994

VOLUME: 1

PLACE OF HEARING: Washington, D.C.

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

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CHARLES A. FARMER)
RICHARD M. SCHAFBUCH) MM DOCKET NO. 93-301
Ilwaco, Washington)
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The above-entitled matter came on for prehearing conference pursuant to notice before Judge Joseph P. Gonzalez, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 1, on Wednesday, January 26, 1994 at 9:00 a.m.

APPEARANCES:

On behalf of Charles A. Farmer:

RICHARD CARR, Esquire
5528 Trent Street
Chevy Chase, Maryland 20815

On behalf of Richard M. Schafbuch:

PETER GUTMANN, Esquire
Pepper and Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006

On behalf of the Mass Media Bureau:

Y. PAULETTE LADEN, Esquire
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Suite 7212
Washington, D.C. 20554

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Hearing Began: 9:05 a.m.	Hearing Ended: 9:10 a.m.

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P R O C E E D I N G S

JUDGE GONZALEZ: The date is January 26, 1994. I have 9:05 in the morning. This is a prehearing conference regarding the mutually exclusive application of Charles A. Farmer and Richard M. Schafbuch for a construction permit for a new FM station to operate on Channel 280C3 in Ilwaco, Washington. Will the parties please make their appearance, beginning on my left?

MR. CARR: Richard Carr appearing on behalf of the applicant, Mr. Farmer.

MR. GUTMANN: Peter Gutmann of Pepper and Corazzini appearing on behalf of Richard M. Schafbuch.

MS. LADEN: Paulette Laden for the Chief of the Mass Media Bureau.

JUDGE GONZALEZ: Before going on the record, the parties did indicate to me that -- the parties indicated to me that there had been some discussion of a possible settlement, but that as of today, they aren't able to report that the parties have reached any type of understanding. I've encouraged the parties to continue to pursue that as a possibility since it would seem that it would be the most efficient way to resolve the mutual exclusivity in this proceeding.

We have also indicated that there doesn't seem to be any reason to alter the procedural dates established by my

1 order that was issued prior to the -- to this prehearing
2 conference, that those dates would stand. I gather no one has
3 any problems, is that correct, with the existing procedural
4 dates?

5 MR. CARR: That's correct.

6 MR. GUTMANN: That's correct.

7 JUDGE GONZALEZ: All right. Is there anything
8 anyone would like to discuss with respect to matters of
9 discovery?

10 MR. GUTMANN: No, Your Honor.

11 JUDGE GONZALEZ: I note that there are no
12 outstanding pleadings. Is that correct?

13 MR. CARR: That's correct.

14 JUDGE GONZALEZ: None that have been filed with me.
15 Well, then, I don't really know what else we can discuss then.
16 Yes, sir?

17 MR. GUTMANN: Your Honor, I just wanted to raise one
18 point of clarification with respect to a joint engineering
19 stipulation which may be possible in this case. I notice from
20 your order that you indicate that if there's to be a
21 stipulation as opposed to a joint exhibit, you would like it
22 supported by an engineer's affidavit.

23 JUDGE GONZALEZ: Right.

24 MR. GUTMANN: I'm just wondering if the parties have
25 actually looked into the situation on their own and have

1 determined that there is no decisional significance to any
2 differences between their proposal, is it really necessary to
3 go to the expense of having an engineer evaluate the case,
4 because my experience has been that engineers generally do
5 want to do a full-blown study before they're prepared to
6 subscribe to it and that entails a substantial amount of cost.

7 JUDGE GONZALEZ: Perhaps we can hear from the Mass
8 Media Bureau since they're generally involved in the matters.

9 MS. LADEN: Your Honor, we have no problem with
10 supporting a stipulation that doesn't have an engineering
11 affidavit in a situation -- which I think is the situation
12 we're talking about here -- in a situation where the question
13 behind the stipulation is a legal one and not an engineering
14 one. For example, my understanding is that there's a slight
15 difference in the way the areas were computed in this case and
16 that, in fact, the areas are quite similar and that that's
17 apparent to the naked eye.

18 So therefore, I think it might be possible -- for
19 example, if the stipulation were to say something like,
20 "There's no decisionally significant difference in the
21 coverage." You know, decisionally significant, of course,
22 would be a legal determination and we would not -- in that
23 situation, we would not require an engineering affidavit.

24 The other situation where we would not is if the
25 area is well-served and the attorneys -- counsel for the

1 parties looks at the situation, looks at the case law, and
2 determines that because the area is well-served, there's no
3 difference that would be decisional. In any event, it's a
4 legal matter and in that case, of course, you know, that's not
5 an engineering question. So in that sort of situation, and I
6 think we have one of those here, we would certainly consent to
7 a stipulation that did not attach an engineering affidavit.

8 JUDGE GONZALEZ: Well, I think she's given you a
9 good guideline as to if, in fact, you do reach a joint
10 stipulation as to what should be included in that stipulation
11 and I would agree with Mrs. Laden. I think that if those
12 points are made in your joint stipulation, then there would be
13 no need for a -- engineering report.

14 MR. GUTMANN: Thank you, Your Honor.

15 JUDGE GONZALEZ: Is there anything further before we
16 conclude?

17 (No response.)

18 JUDGE GONZALEZ: All right. Well, then we will
19 conclude as of -- I believe it's about 9:10. Thank you.

20 (Whereupon, at 9:10 a.m. on Wednesday, January 26,
21 1994, the prehearing conference adjourned.)
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23
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATIONS FOR ILWACO, WASHINGTON

Name

MM DOCKET NO. 93-301

Docket No.

WASHINGTON, D.C.

Place

JANUARY 26, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 6, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

January 27, 1994

Date

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January 27, 1994

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